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January 19, 2001

David Waddell  
Executive Secretary  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243-0505

In re: *Rulemaking to Amend Slamming Rules*  
Docket 00-00983

Dear David.

Please accept for filing the original and thirteen copies of comments filed on behalf of the Southeastern Competitive Carriers Association, XO Tennessee, Inc., MCI WorldCom, AT&T Communications of the South Central States, Inc. and Time Warner Telecom of the MidSouth, LP in the above-captioned proceeding. Copies have been forwarded to parties.

Respectfully submitted,  
BOULT, CUMMINGS, CONNERS & BERRY, PLC

By:

Henry Walker

*Henry Walker by wlm*  
*w/permission*

HW/wlm  
Enclosure

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**  
**NASHVILLE, TENNESSEE**

**In re:**           *Rulemaking to Amend Slamming Rules*  
                  Docket 00-00983

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**COMMENTS OF THE SOUTHEASTERN COMPETITIVE CARRIERS  
ASSOCIATION, XO TENNESSEE, INC., MCI WORLDCOM, AT&T  
COMMUNICATIONS OF THE SOUTH CENTRAL STATES, INC. AND TIME  
WARNER TELECOM OF THE MIDSOUTH , L.P.**

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The Southeastern Competitive Carriers Association (SECCA)<sup>1</sup>, XO Tennessee, Inc. (XO), MCI WorldCom (MCI WorldCom), AT&T Communications of the South Central States, Inc. (AT&T), and Time Warner Telecom of the MidSouth, L.P. (Time Warner), submit the following comments concerning the proposed amendments to Rule 1220-4-2-.56, Verification of Orders for Changes of Long Distance Carriers.

The parties agree with the Tennessee Regulatory Authority (TRA) about the dynamics of the marketplace and recognize the need to protect customers as they are transferred from the base of an acquired carrier to an acquiring carrier. The Federal Communications Commission (FCC) has also recognized this and has established a multi-step process to ensure customers are adequately protected.<sup>2</sup>

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<sup>1</sup>SECCA members include: ACCESS Integrated Networks, Inc., Actel Integrated Communications, Inc., Association of Communications Enterprises (ASCENT), AT&T of the South Central States, Inc., Birch Telecom, Inc., Business Telecom, Inc., Competitive Telecommunications Association, ConnectSouth Communications, Inc., e.spire Communications, KMC Telecom, ICG Communications, ITC^DeltaCom, Inc., MCI WorldCom, NewSouth Communications, Qwest Communications, Time Warner Telecom, TriVergent Communications, US LEC Communications, XO Communications.

<sup>2</sup> The FCC has not yet conducted a formal proceeding to establish rules for transfers of customer bases. The agency has, instead, addressed such transfers on a case-by-case basis. The process, however, has been essentially similar for each carrier request as is evident when comparing language in the two attached FCC orders  
(continued...)

The FCC has determined that limited waivers of their authorization and verification rules are in the public interest because customer base transfers often prevent customers from losing service or paying significantly higher rates. The FCC grants waivers conditionally and has established a process to properly notify affected customers of the transfer and inform them of other choices. The FCC has concluded that the conditions “will adequately protect the rights of the transferred customers.”

First, the FCC requires an acquiring carrier to inform customers of the proposed transfer and assure them that no charges or rate increases will be imposed as a result of the transfer. The Commission provides that affected customers must be advised that they can choose a different preferred carrier, should they desire to do so. In addition, the FCC requires acquiring carriers to give the customers being transferred a toll-free number to call with any questions about the transition. The form of notification letter must be filed with the FCC prior to approval of the waiver. Acquiring carriers are also required to work with complainants and the FCC to investigate and resolve any outstanding complaints regarding services provided by the acquired carrier.

The carriers filing these comments believe that the TRA should mirror, as identically as possible, the FCC’s requirements, just as the state agency has done with its existing slamming rules. If the TRA decides that additional regulation is necessary, the parties propose the following changes to the TRA’s proposed criteria for a waiver:

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<sup>2</sup>(...continued)  
granting waivers for different carriers.

**1220-4-2-.56(2)(d)(1).** The Federal Communications Commission has issued an order granting a waiver of its Slamming Rules for the particular asset transfer transaction.

Parties' Comments: Submission by an acquiring carrier of a copy of the FCC order granting a waiver of its slamming rules, should be deemed presumptive satisfaction of the TRA's second administrative approval process.

**1220-4-2-.56(2)(d)(2).** A notification letter, pre-approved by the Authority, is mailed by U.S. First Class Postage by the carrier currently serving the customer describing the asset transfer and explaining to the customer that his/her local and/or long distance service will be transferred to the acquiring company by a date certain if the customer fails to select another provider. This customer notification shall be mailed to the customer no less than thirty (30) days prior to the actual asset transfer.

Parties' Comments: Requiring acquiring carriers to obtain TRA approval of the notification letter is redundant. The acquiring carrier must file a draft notification letter and receive FCC approval before the FCC will grant their waiver. It is not practical for an acquiring carrier to develop and have each state approve a notification letter when the FCC has already approved the notification letter filed with them. It should be sufficient for an acquiring carrier to file their FCC approved letter with the TRA.

The acquiring carrier should also be the carrier required to send the notification letter to the customers being transferred, not the acquired carrier, because the acquirer is positioned to explain its services to acquired customers. Moreover, in many cases, the acquired carrier is experiencing financial difficulty and may not have the resources, either human or financial, to be able to notify the entire customer base.

Further, the proposed 30-day notice provision may harm customers of an acquired carrier, if such carrier is at risk of shutting down service before the waiver process is complete. The FCC has been flexible, allowing an acquiring carrier to waive this provision if the acquired

carrier's customers are at risk of losing their service. The problem with this provision may be easily addressed by adding language to the proposed rule allowing the TRA to grant a period shorter than 30 days. The TRA does, after all, have the authority to grant a shorter period. The TRA cannot waive the provisions of the state slamming statute but can waive the 30 day notice provision when a shorter period of time is appropriate for the customer base being transferred.

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**1220-4-2-.56(2)(d)(3). The acquiring carrier agrees to pay any fees charged to the customer associated with changing to a new carrier. The notification letter required in 1220-4-2-.56(2)(d)(2) shall inform the customer of this provision.**

Parties' Comments: The proposed language in this subsection indicates that an acquiring carrier is responsible for any fee charged to the acquired carrier's customer, when such customer chooses a preferred carrier outside of the scope of this transaction. The parties believe the intent of this subsection is to prevent the customer from having to pay a switching fee to the acquiring carrier, not exempt the customer from paying the switching fee charged for changing to an unrelated carrier. The FCC, again, has already addressed this issue and provides that the customers of an acquired carrier are not responsible for any fee associated with transfer to the acquiring carrier.

**1220-4-2-.56(2)(d)(4). The acquiring carrier agrees to not exceed the rates charged by the acquired carrier for a period not less than ninety (90) days after which any rate increase shall require thirty (30) days written notice, pre-approved by the Authority, to each affected customer explaining the increase. The notification letter mentioned in 1220-4-2-.56(2)(d)(2) shall inform the customer of this provision.**

Parties' Comments: The amendatory language contained in this subsection is unnecessary and will likely create two different classes of customers when they are, in fact, similarly situated. Under

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<sup>3</sup> AT&T disagrees with this proposed language and believes the TRA should eliminate this requirement entirely from the Authority's proposed rules.

the FCC waiver process, acquiring carriers are prevented from imposing fees or increasing rates as a result of the customer base transfer. Any freeze on rates after the transfer is complete would discriminate against the acquiring carriers' customers, who would be paying different rates and would be subject to different notice requirements than the customers of the carrier acquired.

### **Asset Transfers**

Parties' Comments: Finally, the proposed amendments hinge on the concept of an "asset transfer." There is no definition of an asset transfer in the TRA's rules and regulations. If the TRA deems additional regulation necessary, it is appropriate to define "asset transfer" in the proposed rules or simply refer to the transaction as the transfer of a customer base.

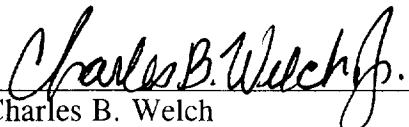
Respectfully submitted,

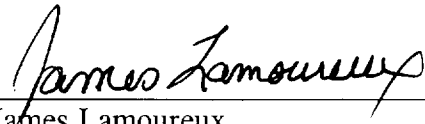
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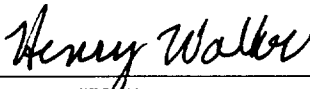
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Central States*

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via U.S. Mail, postage prepaid, to the following on this the 19 day of January , 2001.

Guy Hicks, Esq.  
BellSouth Telecommunications, Inc.  
333 Commerce St.  
Suite 2101  
Nashville, TN 37201-3300

 *by WKM.  
w/permission*  
Henry Walker



5TH ITEM of Level 1 printed in FULL format.

In the Matter of Implementation of the Subscriber Carrier  
Selection Changes Provisions of the Telecommunications Act  
of 1996; First Communications, LLC Petition for Waiver

CC Docket No. 94-129

FEDERAL COMMUNICATIONS COMMISSION

2000 FCC LEXIS 5886

RELEASE-NUMBER: DA 00-2492

November 6, 2000 Released; Adopted November 3, 2000

ACTION: [\*1] ORDER

JUDGES:

By the Associate Chief, Accounting Policy Division, Common Carrier Bureau

OPINIONBY: WALTERS

OPINION:

I. INTRODUCTION AND BACKGROUND

1. In its Carrier Change Orders, n1 the Commission adopted rules applicable to carriers changing a consumer's preferred carrier. n2 In this Order, we grant First Communications, LLC (First Communications), a limited waiver of the authorization and verification requirements of the Commission's rules and Carrier Change Orders. n3 We grant this limited waiver to the extent necessary to enable First Communications to become the preferred carrier of certain consumers currently presubscribed to ITS, without first obtaining the consumers' authorization and verification.

n1 *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996 and Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Further Notice of Proposed Rule Making and Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 10674 (1997), Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508 (1998) (Section 258 Order); stayed in part, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); First Order on Reconsideration, FCC 00-135 (released May 3, 2000), 65 Fed. Reg. 47679 (August 3, 2000); stay lifted, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, FCC 00-255 (released August 15, 2000); reconsideration pending; *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995), stayed in part, 11 FCC Rcd 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-61, 7 FCC Rcd 1038 (1992), reconsideration denied, 8 FCC Rcd 3215 (1993) (PIC Change Recon. Order); *Investigation of Access and Divestiture Related Tariffs*, CC Docket No. 83-1145, Phase I, 101 F.C.C.2d 911 (Allocation Order), 101 F.C.C.2d 935 (Waiver Order), reconsideration denied, 102 F.C.C.2d 503 (1985) (Reconsideration Order) (the Reconsideration Order denied

reconsideration of both the Allocation Order and the Waiver Order). We refer to these orders collectively as the Carrier Change Orders. [\*2]

n2 47 C.F.R. §§ 64.1100 - 64.1190.

n3 On September 28, 2000, First Communications filed a Petition for Waiver (Waiver Petition) relating to First Communications' acquisition of the customer base of ITS Billing, Inc. (ITS). On October 26, 2000, First Communications filed a letter supplementing its Waiver Petition (Supplement), which provides, among other things, further support for First Communications' petition for waiver and requests expedited treatment of the Waiver Petition.

2. Section 258 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, makes it unlawful for any telecommunications carrier to "submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such procedures as the Commission shall prescribe." n4 The goal of section 258 is to eliminate the practice of "slamming," the unauthorized change of a subscriber's preferred carrier. Pursuant to section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with the Commission's verification procedures. n5 In the Section 258 [\*3] Order, the Commission revised its procedures to ensure that carriers obtain the requisite authority prior to changing a customer's preferred carrier. The Commission requires that carriers follow one of the Commission's prescribed verification procedures before submitting carrier changes on behalf of consumers. n6

n4 47 U.S.C. § 258.

n5 The Commission's rules and orders clearly contemplate that a switchless reseller may be a customer's preferred carrier. Therefore, changes to a customer's preferred carrier that do not involve a change in the customer's underlying facilities-based carrier are nonetheless subject to the Commission's authorization and verification rules. See Section 258 Order at paras. 145-146; *WATS International Corp. v. Group Long Distance (USA), Inc.*, 12 FCC Rcd 1743, 1752 (1997) (citing *PIC Change Recon. Order*, 8 FCC Rcd at 3218).

n6 Pursuant to these procedures, a carrier must: (1) obtain the subscriber's written authorization; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order. See 47 C.F.R. § 64.1150. [\*4]

3. First Communications seeks a waiver of our verification rules to allow First Communications to be designated the preferred long distance carrier for customers of ITS without first obtaining each customer's authorization and verification. Because we conclude that, under the circumstances presented, it is in the public interest to grant the waiver, we grant First Communications a waiver, subject to the conditions represented in its filings.

## II. DISCUSSION

1. Generally, the Commission's rules may be waived for good cause shown. n7 As noted by the Court of Appeals for the D.C. Circuit, however, agency rules are

presumed valid. n8 The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. n9 In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. n10 Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest. n11

n7 47 C.F.R. § 1.3.

n8 *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972). [\*5]

n9 *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

n10 *WAIT Radio*, 418 F.2d at 1157.

n11 *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

5. We find that First Communications has demonstrated that good cause exists to justify a limited waiver of the Commission's authorization and verification requirements to the extent necessary to enable First Communications to transfer to its own customer base the affected ITS customers. ITS is a switchless reseller providing interexchange services to business and residential customers. First Communications currently operates as the underlying carrier for ITS's interexchange services. n12 In its Waiver Petition, First Communications states that, in May 1999, it entered into an asset purchase agreement with ITS whereby First Communications acquired certain assets of ITS, including ITS's customer base. n13 Pursuant to this agreement, for a transition period of thirteen months, ITS continued to perform billing and customer care functions, and ITS customers continued [\*6] to be subject to the same rates, terms, and conditions that had been in effect prior to the agreement. n14 According to First Communications, ITS continues to provide long distance service to the affected customers. n15 First Communications asserts that it needs to move those ITS customers to its own billing platform as soon as possible, due to a variety of limitations in the ITS system that have negatively affected those customers and have resulted in lost revenues. n16

n12 Waiver Petition at 1-2.

n13 Waiver Petition at 2.

n14 Waiver Petition at 2.

n15 See November 3, 2000 Letter from Steven A. Augustino to Magalie Roman Salas, Federal Communications Commission, at 1 (Second Supplement).

n16 Supplement at 1-2.

6. We conclude that special circumstances exist to justify a waiver. Without this waiver, the service of some former ITS customers might temporarily be interrupted when ITS ceases providing presubscribed service to customers who fail to respond in a timely fashion to requests for preferred carrier change

authorization; those customers might also pay potentially higher casual calling rates after the discontinuance of presubscribed service. We conclude [\*7] that a waiver of the Commission's carrier change rules and orders is necessary to provide a seamless transition with no disruption of service to the transferred customers.

7. We find that First Communications has demonstrated that a limited waiver of the authorization and verification rules is in the public interest because it will prevent consumers from temporarily losing service or paying significantly higher rates, and because First Communications has agreed to notify the affected customers as described below. First Communications states that it will undertake a two-step process to notify the affected customers of the transfer. n17 In a first letter, First Communications will inform customers of the proposed transfer and assure them that no charges or rate increases will be imposed as a result of the transfer. n18 First Communications states that it will also advise the affected customers that they can choose a different preferred carrier, should they desire to do so. n19 In addition, customers will be given a toll-free number to call with any questions they may have about the transition. n20 According to First Communications, once the proposed transfer has been consummated, it [\*8] will notify these customers of that event and reiterate the foregoing information, assurances, and advice. n21 First Communications has agreed that, if the Commission waives its rules to permit First Communications to provide service to ITS's former customers, First Communications will work with the complainants and the Commission to investigate and resolve complaints regarding services provided by ITS. n22 We conclude that these conditions will adequately protect the rights of the transferred customers of ITS.

n17 Waiver Petition at 2-3; Supplement at 2. First Communications filed sample notification letters. See Waiver Petition, Attachment A (Post-Transfer Letter); Supplement, Attachment A (Pre-Transfer Letter).

n18 Supplement at 2; Pre-Transfer Letter.

n19 Supplement at 2; Pre-Transfer Letter.

n20 Pre-Transfer Letter.

n21 Waiver Petition at 2-3; Post-Transfer Letter; Supplement at 2.

n22 Supplement at n.2.

8. For the foregoing reasons, we grant First Communications a waiver of the authorization and verification requirements of our rules for the limited purposes described above. The grant of this waiver is conditioned upon First Communications' provision [\*9] of customer notification and handling of complaints, as described above and further detailed in the Waiver Petition and Supplements.

### III. ORDERING CLAUSES

9. Accordingly, pursuant to authority contained in Sections 1, 4, and 258 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 258, and the authority delegated under sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, the waiver request filed by First Communications, LLC, on September 28, 2000, and supplemented on October 26,

2000, and November 3, 2000, IS GRANTED to the extent indicated herein.

10. IT IS FURTHER ORDERED that this Order is effective upon release.

K. Michele Walters  
Associate Chief,

Accounting Policy Division,

Common Carrier Bureau

3RD ITEM of Level 1 printed in FULL format.

In the Matter of Implementation of the Subscriber Carrier  
Selection Changes Provisions of the Telecommunications Act  
of 1996; 21st Century Telecom Services, Inc., RCN Telecom  
Services of Illinois, Inc., f/k/a 21st Century Telecom  
Group, Inc., 21st Century Telecom of Illinois, Inc.;  
Petition for Waiver

CC Docket No. 94-129

FEDERAL COMMUNICATIONS COMMISSION

2000 FCC LEXIS 6408

RELEASE-NUMBER: DA 00-2702

December 5, 2000 Released; Adopted December 4, 2000

ACTION: [\*1] ORDER

JUDGES:

By the Associate Chief, Accounting Policy Division, Common Carrier Bureau

OPINIONBY: WALTERS

OPINION:

I. INTRODUCTION AND BACKGROUND

1. In its Carrier Change Orders, n1 the Commission adopted rules applicable to carriers changing a consumer's preferred carrier. n2 In this Order, we grant 21st Century Telecom Services, Inc. (21st Century Telecom), RCN Telecom Services of Illinois, Inc., f/k/a 21st Century Telecom Group, Inc. (RCN), 21st Century Telecom of Illinois, Inc. (21st Century Telecom Illinois) (collectively, Petitioners) a limited waiver of the authorization and verification requirements of the Commission's rules and Carrier Change Orders. n3 We grant this limited waiver to the extent necessary to enable Petitioners to become the preferred carrier of the consumers currently presubscribed to Wedgewood Communications Company (Wedgewood), without first obtaining the consumers' authorization and verification.

n1 Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996 and Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket No. 94-129, Further Notice of Proposed Rule Making and Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 10674 (1997), Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508 (1998) (Section 258 Order); stayed in part, MCI WorldCom v. FCC, No. 99-1125 (D.C. Cir. May 18, 1999); First Order on Reconsideration, FCC 00-135 (released May 3, 2000), 65 Fed. Reg. 47678 (August 3, 2000); stay lifted, MCI WorldCom v. FCC, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, FCC 00-255 (released August 15, 2000); reconsideration pending; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995), stayed in part, 11 FCC Rcd

856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992), reconsideration denied, 8 FCC Rcd 3215 (1993) (PIC Change Recon. Order); *Investigation of Access and Divestiture Related Tariffs*, CC Docket No. 83-1145, Phase I, 101 F.C.C.2d 911 (Allocation Order), 101 F.C.C.2d 935 (Waiver Order), reconsideration denied, 102 F.C.C.2d 503 (1985) (Reconsideration Order) (the Reconsideration Order denied reconsideration of both the Allocation Order and the Waiver Order). We refer to these orders collectively as the Carrier Change Orders. [\*2]

n2 47 C.F.R. §§ 64.1100 - 64.1190.

n3 On November 6, 2000, 21st Century Telecom Services, Inc., RCN Telecom Services of Illinois, Inc., f/k/a 21st Century Telecom Group, Inc., and 21st Century Telecom of Illinois, Inc. filed a Petition for Expedited Waiver relating to the acquisition by 21st Century Telecom, RCN, and 21st Century Illinois of the customer base of Wedgewood Communications Company. (Waiver Petition).

2. Section 258 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, makes it unlawful for any telecommunications carrier to "submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such procedures as the Commission shall prescribe." n4 The goal of section 258 is to eliminate the practice of "slamming," the unauthorized change of a subscriber's preferred carrier. Pursuant to section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with the Commission's verification procedures. n5 In the Section 258 Order, the Commission revised its procedures to ensure that [\*3] carriers obtain the requisite authority prior to changing a customer's preferred carrier. The Commission requires that carriers follow one of the Commission's prescribed verification procedures before submitting carrier changes on behalf of consumers. n6

n4 47 U.S.C. § 258.

n5 The Commission's rules and orders clearly contemplate that a switchless reseller may be a customer's preferred carrier. Therefore, changes to a customer's preferred carrier that do not involve a change in the customer's underlying facilities-based carrier are nonetheless subject to the Commission's authorization and verification rules. See Section 258 Order at paras. 145-146; *WATS International Corp. v. Group Long Distance (USA), Inc.*, 12 FCC Rcd 1743, 1752 (1997) (citing PIC Change Recon. Order, 8 FCC Rcd at 3218).

n6 Pursuant to these procedures, a carrier must: (1) obtain the subscriber's written authorization; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order. See 47 C.F.R. § 64.1120(c). [\*4]

3. Petitioners seek a waiver of our verification rules to allow Petitioners to be designated the preferred local and/or long distance carrier for the affected customers of Wedgewood without first obtaining each customer's authorization and verification. Because we conclude that, under the circumstances presented, it is in the public interest to grant the waiver, we grant Petitioners a waiver, subject to the conditions represented in their

filings.

## II. DISCUSSION

4. Generally, the Commission's rules may be waived for good cause shown. n7 As noted by the Court of Appeals for the D.C. Circuit, however, agency rules are presumed valid. n8 The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. n9 In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. n10 Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest. n11

n7 47 C.F.R. § 1.3.

n8 *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972). [\*5]

n9 *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

n10 *WAIT Radio*, 418 F.2d at 1157.

n11 *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

5. We find that Petitioners have demonstrated that good cause exists to justify a limited waiver of the Commission's authorization and verification requirements to the extent necessary to enable Petitioners to transfer to their own customer base the affected Wedgewood local and/or long distance customers. Wedgewood's customer base consists of residents of apartment communities in Chicago, Illinois.

6. In the Waiver Petition, Petitioners state that 21st Century Telecom and Wedgewood have entered into an asset purchase agreement under which 21st Century Telecom will acquire all of the assets of Wedgewood, including, but not limited to, Wedgewood's local and long distance customers located in Chicago, Illinois and the use of Wedgewood's trade name, billing systems, and network facilities. n12 This agreement is scheduled to close on November 30, 2000. In order to prevent [\*6] the Wedgewood subscribers from losing service after the transaction closes, Petitioners plan to provide service to the Wedgewood subscribers using the Wedgewood trade name and billing system, beginning in December 2000. n13 Petitioners assert that the Wedgewood subscribers will also continue to receive telephone service over the Wedgewood network facilities, subject to the same rates, terms, and conditions. n14

n12 Waiver Petition at 3. According to the Waiver Petition, 21st Century Telecom and Wedgewood have agreed that 21st Century Telecom's subsidiary, 21st Century Illinois, will provide local and interexchange telephone service to the Wedgewood subscribers. 21st Century Illinois is a certificated, facilities-based provider of telephone services in Chicago, Illinois. Id. at 4. On October 1, 2000, the 21st Century Telecom subsidiaries merged into their parent company, 21st Century Telecom Group, Inc. Subsequently, RCN Telecom Services of Illinois, Inc. assumed the operations of 21st Century Telecom and its subsidiaries. Id. at 1, n.1, 2, 4, n.6.



n13 Waiver Petition at 3-5.

n14 Waiver Petition at 3.

7. To maximize administrative efficiencies and eliminate any [\*7] customer confusion, Petitioners ultimately would like to stop using the Wedgewood trade name and serve the Wedgewood subscribers under the RCN name. Thus, Petitioners request expedited treatment of their waiver request to assure that all the Wedgewood subscribers continue to receive presubscribed local and/or long distance service after the discontinuance of the Wedgewood trade name. n15

n15 Waiver Petition at 4.

8. According to the Waiver Petition, RCN and its subsidiaries are in the process of building high-speed, high capacity advanced fiber optic networks to provide a package of services, including local and long distance telephone, video programming, and data services to residential customers. n16 To effectuate the merger and corporate restructuring, n17 21st Century Telecom Illinois has filed a request with the Illinois Commerce Commission (ICC) to surrender its certificates of authority, and RCN has applied to the ICC for authority to provide local exchange and interexchange telecommunications services in Illinois. n18 Once the regulatory approvals have been received, RCN will be the provider of local exchange and interexchange services for the affected Wedgewood subscribers. [\*8] n19

n16 Waiver Petition at 2, n. 3.

n17 See also n.12, supra.

n18 Waiver Petition at 2-3.

n19 Waiver Petition at 3.

9. We conclude that special circumstances exist to justify a waiver. Without this waiver, the service of some former Wedgewood customers might temporarily be interrupted when Wedgewood ceases providing presubscribed service to customers who fail to respond in a timely fashion to requests for preferred carrier change authorization; those customers might also pay potentially higher casual calling rates after the discontinuance of presubscribed service. We conclude that a waiver of the Commission's carrier change rules and orders is necessary to provide a seamless transition with no disruption of service to the transferred customers.

10. We find that Petitioners have demonstrated that a limited waiver of the authorization and verification rules is in the public interest because it will prevent consumers from temporarily losing service or paying significantly higher rates, and because Petitioners have agreed to notify the affected customers as described below. Specifically, Petitioners state that they will undertake a two-step process to notify the [\*9] affected customers of the transfer. To meet state requirements, Petitioners have already sent a letter informing customers of the proposed transfer and assuring them that no charges or rate increases will be imposed as a result of the transfer. n20 Petitioners state that they have also advised the affected customers that they may choose a

different preferred carrier, should they desire to do so. n21 In addition, customers were given a toll-free number to call with any questions they may have about the transition.

n20 Petitioners filed sample notification letters. See Waiver Petition, Exhibits A and B (Notification Letters).

n21 Waiver Petition at 6.

11. According to Petitioners, once the proposed transfer has been consummated, Petitioners will notify these customers of that event and reiterate the foregoing information, assurances, and advice. n22 In addition, Petitioners have agreed that, if the Commission waives its rules to permit Petitioners to provide service to Wedgewood's former customers, Petitioners will work with the complainants and the Commission to investigate and resolve any outstanding complaints regarding services provided by Wedgewood. n23 We conclude [\*10] that these conditions will adequately protect the rights of the transferred customers of Wedgewood.

n22 Waiver Petition at 6-7; Notification Letters.

n23 Waiver Petition at 7.

12. For the foregoing reasons, we grant Petitioners a waiver of the authorization and verification requirements of our rules for the limited purposes described above. The grant of this waiver is conditioned upon the provision by Petitioners of customer notification and upon the handling of complaints, as described above and further detailed in the Waiver Petition.

### III. ORDERING CLAUSES

13. Accordingly, pursuant to authority contained in Sections 1, 4, and 258 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 258, and the authority delegated under sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, the waiver request filed by 21st Century Telecom Services, Inc., RCN Telecom Services of Illinois, Inc., f/k/a 21st Century Telecom Group, Inc., and 21st Century Telecom of Illinois, Inc. on November 6, 2000, IS GRANTED to the extent indicated herein.

14. IT IS FURTHER ORDERED that this Order is effective upon release.  
[\*11]

K. Michele Walters

Associate Chief,

Accounting Policy Division,

Common Carrier Bureau